



BOULT ■ CUMMINGS
CONNERS ■ BERRY PLC

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2004 JAN 27 PM 1:13

Email hwalker@boultcummings.com

Henry Walker
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T.R.A. DOCKET ROOM

January 27, 2004

Honorable Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Complaint of Renaissance Application Facility, LLC Against Cable &
Wireless USA, Inc. and Request for Emergency Relief
Docket No. 04-00030

Dear Chairman Tate:

At the request of the TRA staff, I am filing copies of the following documents in connection with the above-captioned proceeding: (1) two letters from Cable & Wireless USA, Inc. to Renaissance Application Facility and (2) the current contract between Renaissance and Cable & Wireless.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

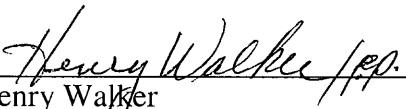
Henry Walker

HW/pp

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2004, a copy of the foregoing document was serviced on the parties of record, via US mail:

James A. Stenger, Esq.
Thelen, Reid & Priest LLP
701 Pennsylvania Ave., NW, Suite 800
Washington, DC 20004-2608


Henry Walker

**CABLE & WIRELESS**

RENAISSANCE APPLICATION FACIL
Ken Nelson
3841 GREEN HILLS VILLAGE DR., SUITE B100
NASHVILLE, TN 37215

Cable & Wireless
11700 Plaza America Drive
Reston
VA 20190

www.cw.com

RE: Notice of Discontinuance of IP Services Associated with Circuit Numbers 1586503

December 18, 2003

Dear RENAISSANCE APPLICATION FACIL,

Cable & Wireless America remains committed to providing exceptional value to the US marketplace, and we are continuing to evaluate our product & service offerings and network infrastructure in order to deliver the highest quality services to our customers.

As you may be aware, certain of the Cable & Wireless America entities filed voluntary petitions for bankruptcy on December 8, 2003. This disconnect notice is not being issued as a result of the bankruptcy filing. Rather, the company is continuing to operate in the ordinary course of business during its bankruptcy.

Based on this ongoing evaluation, we are consolidating our network to focus on Hosting and IP Solutions. While we continue to invest in flexible and secure IP connectivity and networking services, as well as our secure infrastructure, we are discontinuing IP services in the following locations in the US:

Austin, TX
Baltimore, MD
Cleveland, OH

Kansas City, KA
Metairie, LA
Nashville, TN

Orlando, FL
Portland, OR
Raleigh, NC

San Antonio, TX
Santa Clara, CA

As a result, Cable & Wireless America will no longer offer the IP services associated with the circuit numbers referenced above. This was a difficult decision as we have been providing these services to customers for many years. We regret any inconvenience this service discontinuance may cause.

On Monday, February 16, 2004, Cable & Wireless America will discontinue providing service for your circuit(s) referenced above. It will be necessary for you to select an alternative service provider and migrate to that new provider's network before February 16th so that you do not experience disruption in service.

The final bill for your IP services in these locations, dated March 1, 2004, will reflect a credit from February 16 through February 29th.

If your company has ordered its own loop(s) from your local access provider, your new service provider may be able to migrate the loop. If migration is not possible and your company is the local access provider's "customer of record" for the loop, you must request a disconnect from your local access provider in order to ensure that your company is no longer charged for the loop. If, however, Cable & Wireless America provides your loop(s), you will need to order a new loop with your new service provider.

Decisions that impact our customers are never easy, but we are committed to keeping you informed of all changes that may affect the services Cable & Wireless America provides to your company. Please note that only the circuits referenced at the top of this letter are affected. This letter does not affect other products or services, including other IP services, that you may receive from Cable & Wireless America. If you have any questions about the circuit(s) referenced above, please contact our Customer Support Services Hotline at 1-800-528-8156.

While we recognize the short-term inconvenience, we appreciate your patience as we continue to refine our business to ensure that we are your first choice for complex Hosting and IP Solutions.

Sincerely,

Patricia Stiffler
Vice President, Customer Support Services
Cable & Wireless America

**CABLE & WIRELESS**

RENAISSANCE APPLICATION FACIL
Ken Nelson
SUITE B100
3841 GREEN HILLS VILLAGE DR.
NASHVILLE, TN 37215

11700 Plaza America Dr.
Third Floor
Reston
Virginia 20190

www.cw.com/US

1-800-528-8156

December 13, 2003

RE: Notice of Discontinuance of IP Services Associated with Circuit Numbers 1579732

Dear Ken Nelson,

Cable & Wireless America remains committed to providing exceptional value to the US marketplace, and we are continuing to evaluate our product & service offerings and network infrastructure in order to deliver the highest quality services to our customers.

As you may be aware, certain of the Cable & Wireless America entities filed voluntary petitions for bankruptcy on December 8, 2003. This disconnect notice is not being issued as a result of the bankruptcy filing. Rather, the company is continuing to operate in the ordinary course of business during its bankruptcy.

Based on this ongoing evaluation, we are consolidating our network to focus on Hosting and IP Solutions. While we continue to invest in flexible and secure IP connectivity and networking services, as well as our secure infrastructure, we are discontinuing IP services in the following locations in the US:

Austin, TX
Baltimore, MD
Cleveland, OH

Kansas City, KA
Metairie, LA
Nashville, TN

Orlando, FL
Portland, OR
Raleigh, NC

San Antonio, TX
Santa Clara, CA

As a result, Cable & Wireless America will no longer offer the IP services associated with the circuit numbers referenced above. This was a difficult decision as we have been providing these services to customers for many years. We regret any inconvenience this service discontinuance may cause.

On Friday, February 13, 2004, Cable & Wireless America will discontinue providing service for your circuit(s) referenced above. It will be necessary for you to select an alternative service provider and migrate to that new provider's network before February 13th so that you do not experience disruption in service.

The final bill for your IP services in these locations, dated March 1, 2004, will reflect a credit from February 13 through February 29th.

If your company has ordered its own loop(s) from your local access provider, your new service provider may be able to migrate the loop. If migration is not possible and your company is the local access provider's "customer of record" for the loop, you must request a disconnect from your local access provider in order to ensure that your company is no longer charged for the loop. If, however, Cable & Wireless America provides your loop(s), you will need to order a new loop with your new service provider.

Decisions that impact our customers are never easy, but we are committed to keeping you informed of all changes that may affect the services Cable & Wireless America provides to your company. Please note that only the circuits referenced at the top of this letter are affected. This letter does not affect other products or services, including other IP services, that you may receive from Cable & Wireless America. If you have any questions about the circuit(s) referenced above, please contact our Customer Support Services Hotline at 1-800-528-8156

While we recognize the short-term inconvenience, we appreciate your patience as we continue to refine our business to ensure that we are your first choice for complex Hosting and IP Solutions.

Sincerely,



Patricia Stiffler
Vice President, Customer Support Services, Cable & Wireless America

Cable & Wireless Internet Access

Authorisation Form:

global.net

CABLE & WIRELESS

Sales Order Reference: 6278-03-10-22-31

1. CUSTOMER DETAILS

Company (Full Legal Name):	RENAISSANCE APPLICATION FACILITY LLC		
Correspondence Address: (Registered or Head Office):	3841 GREEN HILLS VILLAGE DR. SUITE 6100 NASHVILLE TN 37215 USA		
Main Contact Name:	Ken Neslon	Phone:	615 254 8324
Email:	knelson@rentech.net	Fax:	
Billing Address:	3841 GREEN HILLS VILLAGE DR. SUITE 6100 NASHVILLE TN 37215 USA		
Billing Contact Name:	Ken Neslon	Phone:	615 254 8324
Email:	knelson@rentech.net	Fax:	
Service Location Name:	Renaissance Application Facility		
Service Location Address:	3841 Green Hills Village Drive		
Location Within Room:	Building: Floor: Basement City: NASHVILLE State: TN Zip Code: 37215 Country: USA		

2. SERVICE CHARGES & FEES

C&W will use the following procedure to determine the Charge that month for an Access Port billed on a usage basis. C&W will:

- measure Customer's traffic into the Access Port during each Standard Measurement Interval of each day ("Standard Measurement Interval" is C&W's standard measurement interval based on Access Port speed then in effect and each actual measurement is an "Inbound Measurement")
- measure Customer's traffic levels out of the Access Port during each Standard measurement interval of each day (each, an "Outbound Measurement")
- ignore the 1% of each day's Inbound Measurements with the greatest traffic levels and then identify the Inbound Measurement for each day with the next greatest traffic level ("Daily Inbound Level")
- ignore the 1% of each day's Outbound Measurements with the greatest traffic levels and then identify the Outbound Measurement for each day with the next greatest traffic level ("Daily Outbound Level")
- calculate the average of the Daily Inbound Levels for the month ("Monthly Average Inbound Level") and the average of the Daily Outbound Levels for the month ("Monthly Average Outbound Level")
- use the higher of the monthly Monthly Average Inbound Level and Monthly Average Outbound Level to compute the charges for the Access Port that month

If actual Inbound Measurements and Outbound Measurements for a particular Access Port for a particular month are not available in a timely manner for C&W to bill based on the above usage based level procedure, for that month C&W may (as an interim step) bill Customer (and Customer will pay) the minimum monthly charge indicated below for that Access Port. If C&W does this and later determines that the actual charge for a particular month is greater than the minimum monthly charge, C&W will later bill Customer for the difference between the minimum monthly charge and the actual charge.

Item	Description	MRC- USD\$	MRC- USD\$	Price per Mbps for excess usage- USD\$	Minimum Monthly commitment Mb
Access Port	622 Mbps Usage Based Per Mbit	0	18000	90	100
Access Port Fee	C&W Provided OC12 Standard Loop	0	5582		
Port	None				
Port	None				
TOTAL		0	26582+ charge for usage above Minimum Mbps Amount.		

Early Termination

The Early Termination Charge for a Service with an Initial Term of one year will be 100% of the Total Monthly Recurring Charge multiplied by (a) the number of months (or portion thereof) in the Service's Initial Term if the termination goes into effect before the Term Start Date, or (b) the number of months (or portion thereof) remaining in the Service's Initial Term if the termination goes into effect after the Term Start Date. The Early Termination Charge for a Service with an Initial Term of more than one year will be (a) 100% of the Total Monthly Recurring Charge multiplied by 12, plus 50% of the Total Monthly Recurring Charge multiplied by the number of months (or portion thereof) in excess of 12 in the Service's Initial Term if the termination goes into effect before the Term Start Date, (b) 100% of the Total Monthly Recurring Charge multiplied by the number of months (or portion thereof) remaining in the first year of the Service's Initial Term, plus 50% of the Total Monthly Recurring Charge multiplied by the number of months (or portion thereof) remaining in the Service's Initial Term (after the first year) if the termination goes into effect during the first year of the Initial Term, or (c) 50% of the Total Monthly Recurring Charge multiplied by the number of months (or portion thereof) remaining in the Renewal Period then in effect. The Early Termination Charge for a Service is 50% of the Total Monthly Recurring Charge multiplied by the number of months (or portion thereof) remaining in the Renewal Period then in effect. The Early Termination Charge for a Service subject to usage based charges will be determined using the indicated minimum monthly charge for the Access Port.

ADDITIONAL EARLY TERMINATION, SEE NOTES NEXT PAGE

Credits

In calculating the amount of credit for which Customer is eligible as described in the Service Schedule, "Monthly Charge" means the amount due for the Access Port for the month in question.

3. CONTRACT OPTIONS

Initial Term (Years):

1

4. CUSTOMER AGREEMENT

Suggested Service Dates:	20	12	2003
	Day	Month	Year

If this Authorization Form is for an upgrade to existing Service only, this Authorization Form includes the terms applicable to the provision of the existing Service; otherwise, this Authorization Form includes the Cable & Wireless documents listed below, and Customer acknowledges receipt of, and agrees to be bound by, the terms in these documents:

- *General Terms (G-T-01-01)
- *Service Specific Terms: global.net (SST-GN-US-02-C-EN)
- *Service Specific Terms: Cable & Wireless global.net (SS-GN-02-D-EN) and as applicable (SS-A1-GN-US-02-A-EN)
- *Cable & Wireless Acceptable Use Policy (as currently posted at www.cw.com)

Customer Name: RENAISSANCE APPLICATION FACILITY LLC		Cable & Wireless USA, Inc.	
Signature: <i>[Signature]</i>		Signature	
Printed Name: LAURENCE A. DODD		Printed Name	
Title: CFO		Title	
Date: 22 10 2003	Day	Month	Year

Cable & Wireless USA, Inc. has its principal office at 8219 Leesburg Pike, Vienna, Virginia 22182

Note: Other technical information, including Domain Name Service and IP Addressing requirements, are collected via our web site located at <http://intopage.cw.net>. Ask your Account Manager for details.

ADDITIONAL EARLY TERMINATION:

CUSTOMER MAY TERMINATE THIS AGREEMENT WITHOUT PENALTY, SHOULD CABLE + WIRELESS REMOVE IT'S HUB FROM THE NASHVILLE, TN AREA.

OTHER ITEMS:

THIS AGREEMENT REPLACES ANY OTHER EXISTING AGREEMENT CUSTOMER HAS WITH CABLE + WIRELESS.



CABLE & WIRELESS

Addendum to Authorization Form: global.net

TOTAL SERVICE CHARGES AND FEES

Notwithstanding the Early Termination provision set out in the global.net Authorization Form signed by Customer along with this Addendum, if C&W closes its Internet backbone node in Nashville (NSY) and does not relocate in the Nashville area ("Nashville Node Closure"), Customer may, within 30 days of receipt of C&W's notice of the Nashville Node Closure by providing five (5) days prior written notice to C&W, terminate the Agreement without incurring an Early Termination Charge. In the event of such a termination by Customer, Customer shall pay C&W for all Services provided under the Agreement prior to the effective date of termination, and neither party shall have any liability or obligation to the other in connection with the Agreement arising from such a termination.

This Addendum shall be effective after signature by both Customer and C&W and upon acceptance by C&W of the Authorization Form modified by this Addendum.

Customer: Renaissance Application Facility LLC
Signature: [Signature]
Printed Name: LAWRENCE A. DESPL
Title: CFO
Date: 10/22/03

Cable & Wireless USA, Inc.
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Addendum Number 2

This Addendum Number 2 ("Addendum") effective as of the date of the last signature below, is an amendment to the Cable & Wireless General Terms (US edition) (GT-US-01-B), Service-specific terms: global.net (US edition) (SST-GN-US-02-B), Authorization Form, and Service Schedule (SS-GN-GB/US-02-C), as modified ("Agreement") between Cable & Wireless USA, Inc. ("C&W USA") and its customer signing below ("Customer"). Terms capitalized herein but not defined herein have the same meanings as in the Agreement.

1. The parties agree that the Agreement is hereby amended and modified as follows:

a) Replace "Total Service Charges & Fees" in Authorization Form: global.net with:

Customer commits to using a minimum amount of Mbps of the Services per month ("Minimum Commitment Level"). Customer hereby commits to a Minimum Commitment Level of 200 Mbps; *provided, however*, Customer may, by notice from a Senior Level Executive to C&W USA, increase its Minimum Commitment Level, to that of a higher tier, as listed in Table 1. Any increase of Minimum Commitment Level will be recognized on Customer's next invoice. In the event the total usage in a month is less than the Minimum Commitment Level, then C&W USA will invoice and Customer shall pay the Minimum Commitment Level multiplied by the Charge per Mbps as set forth in Table 1 below. In the event the Customer's total usage in a month is more than the Minimum Commitment Level, then C&W USA will invoice and Customer shall pay for all the usage in Mbps multiplied by the Charge per Mbps associated with Customer's chosen Minimum Commitment Level as set forth in Table 1 below.

TABLE 1

Minimum Commitment Levels in Mbps	Charge per Mbps
200	\$90
250	\$87
300	\$84
350	\$81
400	\$78
450	\$75

For avoidance of doubt, this Addendum Number 2 supersedes all other agreements, except the underlying Agreement, per Customer's request.

Renaissance Application Facility, LLC
(Customer)

Cable & Wireless USA, Inc.

By: LAWRENCE A. DODD

By: _____

Name: [Signature]

Name: _____

Title: CFO

Title: _____

Date: 10/23/03

Date: _____

Cable & Wireless

General terms
US edition



CABLE & WIRELESS

Contents

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A Definitions

- 1 **'Customer'** means the entity ordering services from C&W, and **'C&W'** means the Cable & Wireless entity signing the Authorization Form
 - Customer and C&W are each referred to here individually as a **'Party'** and both together as the **'Parties'**
 - A Party's **'Affiliated Company'** is an entity that controls, is controlled by, or is under common control with the Party
 - **'C&W Party'** means C&W, its Affiliated Companies, suppliers, subcontractors and licensors taken together
- 2 **'Agreement'** means the Authorization Form, these General Terms, the Service Schedule, the Service-Specific Terms, and C&W's Acceptable Use Policy taken together, where
 - **'Authorization Form'** means the C&W service order form Customer signs (and C&W accepts) for the Service being ordered,
 - **'General Terms'** means the clauses in this document,
 - **'Service Schedule'** means the Service description and/or service level agreement document(s) referenced on the Authorization Form that are specific to a Service,
 - **'Service-Specific Terms'** means the terms and conditions referenced on the Authorization Form that are specific to a Service, and
 - **'Acceptable Use Policy' ('AUP')** means C&W's Acceptable Use Policy posted at C&W's website (currently at www.cw.com) as C&W may change this policy without notice from time to time
- 3 **'Service'** means a service C&W provides under the Agreement, including any C&W Equipment and C&W Software, where
 - **'C&W Equipment'** means equipment C&W furnishes and uses to provide Service, including any associated user manuals and other documentation, and
 - **'C&W Software'** means software C&W furnishes and uses to provide Service, including embedded firmware and any updates, upgrades and other modifications furnished under the Agreement and any associated user manuals and other documentation

B Service delivery and performance

- 1 C&W will provide a Service in accordance with the Authorization Form and the service levels and other requirements described in its Service Schedule
- 2 Customer will reasonably cooperate with C&W in C&W's provision of a Service, including any diagnostic or other maintenance or upgrade activities
- 3 C&W may (at no charge to Customer) modify a Service so long as this does not cause a materially adverse impact on Customer's use of the Service
- 4 If a Service requires the use of non-C&W services and/or facilities in a location where local regulations do not permit C&W to order these services and/or facilities directly from the local provider, Customer hereby appoints C&W as its agent to place the order on Customer's behalf (**'Local Provider Order'**), and to otherwise deal with the local provider as C&W may reasonably consider necessary in order to provide the Service

C Charges, payment terms and credit terms

- 1 Customer will pay C&W
 - (a) each charge owing under the Agreement (**'Charges'**) in the currency shown on the Authorization Form, and
 - (b) in the manner described in the Service Schedule or as C&W may otherwise reasonably specify, each as C&W may change from time to time
- 2 The Charges are exclusive of (and Customer will pay) any applicable taxes, fees and surcharges (including, but not limited to, any applicable Value Added Tax or other tax of a similar nature in any jurisdiction) that apply to the Charges and/or a Service and any other amounts C&W is required by law or regulation to collect from or pay to others to support statutory or regulatory programs with respect to Service (taken together, **'Fees & Taxes'**), except to the extent Customer gives C&W proper proof of exemption
- 3 C&W will invoice Customer periodically for a Service as described in its Service Schedule
- 4 Customer will pay the full amount due (both Charges and Fees & Taxes) on an invoice within 30 days of the invoice date
- 5 In addition to any other remedy available to C&W, C&W may assess a late fee of 1.5% per month on all past due amounts

- 6 C&W will not assess a late fee on an invoiced amount (and the amount's original due date will not apply) if Customer disputes the amount in good faith and does all of the following
- (a) pays all undisputed amounts on the invoice when they are otherwise due,
 - (b) notifies C&W in writing of the disputed amount by when payment would otherwise be due,
 - (c) cooperates with C&W to promptly resolve the dispute, and
 - (d) pays the agreed-upon portion of the disputed amount by its new due date, that is, within 10 days of resolution of the dispute
- 7 Upon C&W's request, Customer will promptly give C&W
- (a) copies of Customer's current audited financial statements, or
 - (b) if Customer is not required by law or regulation to have these statements, other information describing Customer's current financial condition
- 8 Even if C&W does not initially require Customer to provide a letter of credit or security deposit, C&W may request a letter of credit or security deposit if Customer subsequently experiences a materially adverse change in its financial condition or Customer orders or uses more Service. In such event, within 2 business days after Customer receives a request from C&W, Customer will give C&W either of the following if so requested by C&W
- (a) a letter of credit (in an amount reasonably requested by C&W and in a form and with an institution reasonably acceptable to C&W), or
 - (b) a security deposit in an amount reasonably requested by C&W

D Term, suspension and termination

- 1 The initial term ('**Initial Term**') for a Service will be as shown on the Authorization Form
- 2 The day the Initial Term for a Service starts will be determined as described in its Service Schedule
- 3 Unless described otherwise in a Service's Service Schedule, the Service's term will automatically renew after the end of its Initial Term (each period of renewal, a '**Renewal Period**')
- 4 Customer may (by giving C&W 30 days notice in writing) direct C&W to stop providing (or stop C&W's efforts toward providing) a Service (a '**Termination for Convenience**'). In the event of a Termination for Convenience, Customer will pay C&W (as an early discontinuation of service fee and not as a penalty) any early termination charge described in the Service Schedule ('**Early Termination Charge**'). Customer will pay the Early Termination Charge within 30 days after Customer sends the termination notice to C&W
- 5 If either Party experiences a Bankruptcy/Insolvency Event, the Party not experiencing the Bankruptcy/Insolvency Event may terminate the Agreement by giving the other Party notice in writing. A '**Bankruptcy/Insolvency Event**' is when a Party is unable to pay its debts when due, or any of the following happens to a Party under its national laws for the protection of debtors (or like circumstances arise or like actions are taken)
- (a) the Party is determined to be bankrupt or insolvent or the process to make this determination has started,
 - (b) the Party has a receiver, administrator or liquidator appointed for it,
 - (c) the Party makes an arrangement or composition with, or an assignment for the benefit of, its creditors, or
 - (d) the Party goes into either voluntary (other than for reconstruction or amalgamation) or compulsory liquidation
- If C&W so terminates the Agreement, Customer (in addition to any other remedy available to C&W) will pay the same Early Termination Charge(s) as if Customer had requested a Termination for Convenience
- 6 C&W may suspend or block access to a Service or all Services (each such circumstance, a '**Service Suspension**') without notice for any of the following reasons
- (a) to comply with any law, regulation, court order, or other governmental request or order requiring immediate action,
 - (b) to prevent interference with, damage to, or degradation of C&W's network,
 - (c) to eliminate a hazardous condition,
 - (d) the Service is used in a manner that violates the AUP or any applicable law or regulation, or otherwise exposes C&W to legal liability, whether this use is by Customer or any other entity or person using the Service and whether or not

this use is authorized or consented to by Customer (each such circumstance, '**Service Misuse**'), or

- (e) Customer does not pay an amount when due, and Customer still does not pay the amount within 10 days after Customer receives written notice from C&W that an amount is past due

- 7 If Customer cures the cause of a Service Suspension, C&W will resume the Service once Customer pays C&W's reasonable Charges for C&W resuming the Service. C&W may terminate the Agreement if Customer does not cure the cause of a Service Suspension or does not pay the associated additional Charges for C&W resuming the Service. In such an event, Customer (in addition to any other remedy available to C&W) will pay the same Early Termination Charge(s) as if Customer had requested a Termination for Convenience
- 8 Subject to C&W's right to terminate earlier as provided in Section D 7 above, a Party may terminate the Agreement if the other Party materially breaches the Agreement and does not correct the breach within 30 days after receiving written notice of the breach. If C&W so terminates the Agreement, in addition to any other remedies available to C&W, Customer will pay C&W the same Early Termination Charge(s) as if Customer had requested a Termination for Convenience

E Liabilities, warranties and indemnities

- 1 C&W will be responsible as described in the Agreement if a Service is not provided in accordance with its Service Schedule and the other terms of the Agreement. C&W's only obligation and Customer's only remedy in such a situation will be those obligations and remedies as may be specifically provided for in the Service Schedule
- 2 A Party is not liable for, and it is excused from, any failure or delay in performance due to a cause beyond its reasonable control. The affected Party will promptly notify the other of any circumstance covered by this paragraph
- 3 C&W warrants that it will provide a Service in accordance with the terms of the Agreement. NO C&W PARTY MAKES ANY REPRESENTATIONS, ENDORSEMENTS OR OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED, INCLUDING UNINTERRUPTED OR ERROR-FREE OPERATIONS OR THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) REGARDING ANY SERVICE, FACILITIES, EQUIPMENT, SOFTWARE, REPORTS OR OTHER INFORMATION, OR OTHER PRODUCTS OR ADVICE PROVIDED OR USED BY C&W UNDER THE AGREEMENT
- 4 C&W HAS NO LIABILITY WHATSOEVER FOR OR IN CONNECTION WITH ANY MERCHANDISE, INFORMATION, PRODUCTS OR SERVICES PROVIDED OR ACCESSED THROUGH THE INTERNET
- 5 NO C&W PARTY (INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS) WILL BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY OR ANY OTHER TORT) FOR THE FOLLOWING DAMAGES THAT MIGHT ARISE IN CONNECTION WITH THE AGREEMENT
- (a) DIRECT DAMAGES IN EXCESS OF THE CHARGES CUSTOMER PAID FOR THE SERVICE FOR WHICH THE LIABILITY RELATES FOR THE MONTH DURING WHICH THE LIABILITY ARISES, OR
 - (b) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, AND LOSS OF BUSINESS OPPORTUNITY) EVEN IF ADVISED OF THE POSSIBILITY OF THESE DAMAGES
- Nothing in the Agreement limits a C&W Party's liability for personal injury or death caused by the negligence of the C&W Party
- 6 Customer will indemnify, defend and hold harmless each C&W Party from and against any liabilities, actions, losses, judgments, payments made in settlement, costs, suits, proceedings, demands or claims from third parties, including C&W's other customers (each, a '**Third Party Claim**') incurred by any C&W Party resulting from any of the following, except to the extent due to C&W being in breach of its obligations to Customer under the Agreement
- (a) use of Service,
 - (b) use of non-C&W furnished services, facilities, equipment and/or software with any Service,
 - (c) Fees & Taxes not paid promptly by Customer,
 - (d) breach of any Customer representation or warranty in the Agreement, or
 - (e) Local Provider Order or C&W's other dealings with a local provider

- 7 C&W will indemnify, defend and hold harmless Customer and Customer's Affiliated Companies (including their directors, officers, employees and agents) from and against any Third Party Claims incurred by Customer or its Affiliated Companies resulting from any claim that Customer's use of a Service is infringing upon or misappropriating any copyright, trademark, US or UK patent or similar proprietary right of a third party. This type of Third Party Claim is referred to here as an **'Infringement Claim'**.
- 8 The Party requesting to be indemnified, defended and/or held harmless from a Third Party Claim (**'Protected Party'**) will promptly notify the other Party (**'Protecting Party'**) in writing of the situation giving rise to the Third Party Claim. The Protecting Party will control the defense against the Third Party Claim, including any negotiation, settlement and appeal of the Third Party Claim. The Protected Party will (at the Protecting Party's request and cost) reasonably assist the Protecting Party in its defense of the Third Party Claim.
- 9 C&W will (in addition to its obligations under Section E 7 above) do one of the following as its sole obligation to Customer and as Customer's sole remedy against C&W if a Service has become (or in C&W's reasonable judgment is likely to become) the subject of an Infringement Claim:
- (a) at C&W's cost, obtain for Customer the right to continue using the Service,
 - (b) at C&W's cost, replace or modify the Service so that it no longer is subject to the Infringement Claim, or
 - (c) after giving Customer notice in writing, stop providing the Service or terminate the Agreement without incurring any liability to Customer as a result.
- C&W is not liable to Customer if the Infringement Claim is based on:
- (a) Customer's unauthorized modification of the Service, or
 - (b) the use of the Service in combination with any service, facilities, equipment or software not furnished by a C&W Party.

F Data protection

'Personal Data' means information defined as such in the EU Data Protection Directive (95/46/EC) or information treated as personal data under any other law or regulation applicable to the information. **'Applicable Data Protection Law'** means the EU Data Protection Directive (95/46/EC) or other applicable law or regulation as they may be amended from time to time.

The Parties acknowledge that in providing Service, C&W may process Personal Data, including, without limit, transferring it outside the European Economic Area and/or disclosing it to third parties. C&W will have in place adequate technical and organisational security measures so that the confidentiality of this processing complies with Applicable Data Protection Law, and Customer will:

- (a) comply with, and its acts or omissions will not cause C&W to be in breach of, any Applicable Data Protection Law,
- (b) obtain adequate consents from its customers and employees, including for transfers of Personal Data, and
- (c) be responsible for the instructions it may give to C&W regarding the processing of Personal Data. C&W will act on those instructions as reasonably necessary for the provision of Service.

G Miscellaneous terms

- 1 In the event of any conflict between these General Terms and any terms in a Service-Specific Terms attachment or a Service Schedule, the terms in the Service-Specific Terms attachment or the Service Schedule (as applicable) will prevail.
- 2 C&W will comply with all applicable laws and regulations regarding the provision of Service, and Customer will comply with the AUP and all applicable laws and regulations regarding the use of Service.
- 3 C&W will provide a Service on the condition that C&W is able to keep in place the necessary licenses, permissions, ministerial determinations, directions and declarations and other governmental approvals. C&W will use all reasonable efforts to keep these in place.
- 4 Except as specifically provided for in the Agreement, the Agreement does not give rise to any third party being a third party beneficiary of the Agreement or being entitled to any rights whatsoever, including, but not limited to, the right to enforce any term of the Agreement.

- 5 Neither Party may use the other Party's names, logos, trademarks, trade names or other proprietary marks (**'Marks'**) in any advertising or publicity without first obtaining the other Party's written approval to do so. Unless the approval indicates otherwise, permission to use a Party's Marks will last only for the duration of the Agreement.
- 6 Any notice about breach, default, Service Suspension, termination or defense/indemnification/hold harmless obligations (each, a **'Legal Notice'**) will be written in English, and will be either delivered in person, or sent to the other Party by:
- (a) postal mail,
 - (b) facsimile (electronically confirmed and followed up immediately by postal mail), or
 - (c) electronic mail (followed up immediately by postal mail).
- A Legal Notice is considered given when it is delivered. Customer will send a Legal Notice to C&W to the attention of 'Law Department' at the C&W address shown on the Authorization Form. C&W will send a Legal Notice to Customer to the attention of the person who signed the Authorization Form at the address shown on the Authorization Form.
- 7 Neither Party may assign or transfer the Agreement or any rights or obligations under the Agreement without first receiving written consent from the other Party (which consent may not be unreasonably withheld). However:
- (a) Customer may (by giving written notice to C&W) assign its rights and obligations to an Affiliated Company so long as that entity has the financial, technical and management capacity to perform all of Customer's obligations under the Agreement, and
 - (b) C&W may (by giving written notice to Customer) assign its rights and obligations to a successor-in-interest or an Affiliated Company(s).
- 8 The provisions of the Agreement are severable. If a provision in the Agreement is found to be unenforceable, the Agreement will be deemed amended to the minimum extent necessary to make the Agreement fully enforceable so long as the Agreement as amended is consistent with the Parties' original intentions and expectations.
- 9 Neither Party waives its future or other rights just because it does not strictly enforce certain rights it may have.
- 10 The Parties are independent contracting parties, and the Agreement does not make the Parties principal and agent, partners, joint venturers, or employer and employee.
- 11 Neither Party will disclose the prices or any other terms of the Agreement except that:
- (a) either Party may disclose this information as may be required by law, regulation or other governmental request or order so long as the Party first notifies the other Party of the situation and gives the other Party adequate opportunity to intervene unless such notice is legally prohibited,
 - (b) C&W may disclose this information to a potential purchaser of all or a portion of C&W, or to others working with C&W in providing Service if these other parties have a need to know, and
 - (c) C&W may disclose this information to its Affiliated Companies.
- 12 The Agreement is made in, governed by and subject to the laws (other than the conflict of laws rules) of the Commonwealth of Virginia.
- 13 The Agreement is subject to the jurisdiction of both the courts located in the Commonwealth of Virginia and the courts located in the state where Customer has its principal place of business.
- 14 The Agreement describes the entire understanding between the Parties with regard to the subject matter of the Agreement. The Agreement supersedes all oral or written agreements, understandings and representations between the Parties (whether made prior to or at the same time as the Agreement).
- 15 The Parties may modify the Agreement only if the Parties agree to do so in writing. Purchase orders or similar documents Customer may issue to C&W will not change or add to any of the terms of the Agreement.

Cable & Wireless

Service-specific terms: global.net
— US edition —



CABLE & WIRELESS

A General

A word that starts with a capital letter that is not defined here means the same as in C&W's *General Terms* and C&W's *Service Schedule* for the Service

B C&W CPE

- 1 Customer will use C&W CPE Hardware only as part of a Service
- 2 C&W or its supplier(s), licensor(s) or designee(s) will at all times keep title to, and all other ownership rights in, C&W CPE
- 3 Customer will not (or attempt to or allow others to) open, repair, maintain, modify or move C&W CPE Hardware or remove or otherwise tamper with any ownership or other identification marks or tags on C&W CPE Hardware. If Customer does any of these, Customer will pay C&W the extra costs C&W reasonably spends as a result
- 4 Customer will be responsible for any loss of, damage to, or excessive wear and tear of, C&W CPE Hardware once delivered to a Customer Site, unless caused by C&W or others working for C&W
- 5 Customer will not permit any lien, charge or other like restriction to be placed on C&W CPE
- 6 C&W may take possession of C&W CPE from a Customer Site or take other reasonable steps needed to protect ownership interests in C&W CPE
- 7 Promptly after Service terminates, Customer will give C&W (and others working for C&W) access to and reasonable help with removing C&W CPE
- 8 C&W grants Customer a non-exclusive, non-transferable, limited license to use C&W CPE Software only with C&W CPE Hardware and only until Service terminates. Customer will not (or attempt to or allow others to) do any of the following with C&W CPE Software
 - (a) reproduce, modify, adapt or translate it,
 - (b) create derivative works from it,
 - (c) transfer or transmit it in any form or by any means,
 - (d) reverse engineer, disassemble, or otherwise attempt to derive its source code, and
 - (e) use it for any purpose other than as allowed here

C Customer equipment

- 1 Customer is responsible for the installation, maintenance, performance and compatibility of Customer Equipment with Service
- 2 Customer will comply with reasonable security standards and procedures established by C&W for Customer Equipment
- 3 If C&W gives Customer notice that C&W reasonably believes certain Customer Equipment is likely to cause interference or a hazardous condition, Customer will promptly correct the problem

D Liabilities, warranties and indemnities

- 1 IF CUSTOMER SELECTS A ROUTER OPTION AND CONTRACTS DIRECTLY WITH C&W'S ROUTER INSTALLATION SUBCONTRACTOR FOR DOING THE ROUTER CONFIGURATION WORK, C&W MAKES NO REPRESENTATION OR WARRANTY AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THAT CONTRACT OR THAT WORK
- 2 In addition to its obligations in Section E 6 of C&W's General Terms, Customer will indemnify, defend and hold harmless each C&W Party from Third Party Claims incurred by any C&W Party resulting from any Resale

E Customer domain names

C&W will not be liable to Customer if C&W fails to register a Customer Domain Name or if Customer is not timely notified of an upcoming registration renewal date. C&W gives no warranty regarding successful registration, time of submission of any application or right to continued use of a domain name after registration. C&W is not required to participate in any disputes relating to the application or registration of any Customer Domain Name

F Resale

If Customer resells Service to others or resells some functionality that a Service provides to others (each, an "Other User" and each such action, a "Resale"), Customer will

- (a) as between Customer and C&W, be responsible for Other Users' use of Service,
- (b) be responsible for all dealings with Other Users about Service,
- (c) require each Other User to agree in writing not to engage in Service Misuse,
- (d) not make any representation or warranty, or offer any indemnity to or otherwise make any commitment to any Other User on behalf of C&W,
- (e) be responsible for having and keeping in place all licenses, permissions, ministerial determinations, directions and declarations and other governmental approvals needed for Resale, and
- (f) comply with all applicable Resale laws and regulations

G Use of service

C&W may monitor use of Service (and disclose and otherwise use the information so obtained) only to the extent allowed by applicable privacy and other laws and regulations and only to

- (a) comply with applicable law, regulation or other governmental request or order,
- (b) make sure that there is no Service Misuse if C&W has good reason to believe there may be Service Misuse,
- (c) protect the integrity of the public Internet and/or C&W's systems and networks,
- (d) provide Service in keeping with the terms of the Agreement, or
- (e) take other actions agreed to or requested by Customer

H References

C&W may disclose as part of its promotional activities the fact that Customer is obtaining Service from C&W